In the High Court of Judicature at Madras

Dated: 23.09.2005

Coram

The Honourable Mr. JUSTICE P.D.DINAKARAN

Civil Revision Petition (PD) No.1334 of 2004
& C.M.P.No.12673 of 2004

T.H.Syed Ahmed

.... Petitioner

Vs.

T.H.Mustaq Ahmed

.... Respondent

Civil Revision Petition filed under Article 227 of The Constitution of India against the fair and final order dated 21.06.2004 made in I.A.No.705 of 2004 in O.S.No.145 of 2002 on the file of District Munsif, Krishnagiri.

For Petitioner : Mr. M.Ganeshan

For Respondent : Mr. N.E.A. Dinesh

O R D E R

This revision petition is directed against the order dated 21.06.2004 made in I.A.No.705 of 2004 laid by the revision petitioner in a suit, O.S.No.145 of 2002, for bare injunction.

2. The said suit was resisted by the respondent/defendant pleading that the respondent/defendant was in exclusive possession of the suit property, based on which, issues were framed, witnesses were examined and the evidence was also closed.

3. At that stage, the revision petitioner/plaintiff has filed I.A.No.705 of 2004 under Order 23 Rule 1 of Civil Procedure Code to withdraw the suit with liberty to file a fresh suit for the same cause of action including the relief of declaration.

4. The Court below finding that nothing prevented the plaintiff to include the relief of declaration in the present suit itself by way of an amendment and that the plaintiff has not shown sufficient reason to get the relief, dismissed the said application by an order dated 21.6.2004.

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5. Aggrieved against the order dated 21.06.2004 made in I.A.No.705 of 2004, the plaintiff/petitioner has preferred this

revision.

6. Heard both sides.

7. The grant of relief under Order 23 Rule 1 C.P.C to withdraw the suit with leave to file a fresh suit is at the discretion of the court, which could be exercised only where the Court satisfies that the suit is filed by one reason of formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim. The Court must also get satisfied about the sufficiency of the grounds for allowing the plaintiff to institute a fresh suit for the same claim or part of a claim on the cause of action. Accordingly, the Court is under the duty mandated to take into consideration the relevant aspects of the matter including the desirability of permitting the party to start a fresh round of litigation on the same cause of action. In other words, grant of permission to withdraw the suit with leave to file a fresh suit may result in annulment of a right vested in the defendant or even a third party and such facts are also be taken into consideration while granting permission to withdraw the suit with leave to file a fresh suit under Order 23 Rule 1 C.P.C. Unless there exists proper grounds for granting permission for withdrawal of the suit with leave to file fresh suit by the plaintiff, the relief cannot be granted for merely asking for.

8. In the instant case, the defendant came with the plea that he is in exclusive possession of the property to non-suit the revision petitioner/plaintiff for bare injunction, in which case, if leave is granted to withdraw the suit and to file fresh suit for declaration and injunction, the right of the defendant would be greatly prejudiced. If the revision petitioner/plaintiff ultimately fails in the suit on a finding of the Court that the defendant is in possession of the property, the revision petitioner/plaintiff is always at liberty to file a fresh suit for declaration and injunction, if he is so advised.

9. Hence, finding no reason to interfere with the order of the trial Court, this revision petition is dismissed. No costs. Consequently, C.M.P.No.12673 of 2004 is also dismissed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The District Munsif, Krishnagiri.

+1cc to Mr.K.Venkataraman, Advocate Sr 40065
+1cc to Mr.V.Nicholas, Advocate sr 40011

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km/7.10.

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